

## **MINUTES OF OCTOBER 21, 2013**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 21, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, and Mr. Jeff Hudson, with Mr. James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes of September 9, 2013 as circulated. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Finding of Facts for September 9, 2013 as circulated. Motion carried 4 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

## **PUBLIC HEARINGS**

**Case No. 11276 – Stockley Materials, LLC** – north of Route 9 (Lewes Georgetown Highway) and west of Nassau Commons Road 3,700 feet southwest of Route One at Five Points. (Tax Map I.D. 3-34-5.00-152.06)

An application for a special use exception to place a manufactured home type structure for business, commercial, or industrial use.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, those questions should be directed to Vince Robertson, Esquire.

Mr. Lank presented the case and stated that the Office of Planning & Zoning received fifty six (56) letters in support of the Application.

Kenneth Adams and Mark Davidson were sworn in to testify about the Application. Dennis Schrader, Esquire, presented the case to the Board on behalf of the Applicant and stated that Mr. Adams is a principal of Stockley Materials, LLC; that the Applicant is requesting a special use exception to retain an existing manufactured home type structure for an existing business; that a special use exception was previously granted for the unit in 2008 and expired July 2013; that there are two (2) manufactured home type structures that have been remodeled

and have the appearance of a Colonial style home; that the Applicant has landscaped the site to improve its attractiveness; that the nearby area is mixed use commercial and residential in nature; that a vineyard is located nearby; that the sales entrance is located near the entrance of Nassau Commons and that the entrance to the Property is not located on Route 9 (Lewes Georgetown Highway); that the Applicant leases the Property; that the Applicant sells landscaping material; and that the Property is zoned C-1 Commercial.

Mr. Adams, under oath, confirmed the statements made by Mr. Schrader. Mr. Adams testified that the use does not substantially adversely affect the surrounding properties and that neighboring properties are also commercial properties.

The Board members found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11276 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the Applicant has used the Property in as proposed for the past five (5) years and the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **granted for the reasons stated for a period of five (5) years**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11277 – Michael Zorzi** – east of Road 273A (Bald Eagle Road) located at the southwest corner of Crazy Lane and 4<sup>th</sup> Street and being Lots C-1 to C-4 within Bay Vista development. (Tax Map I.D. 3-34-19.16-115.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case. Michael Zorzi and Elizabeth Zorzi were sworn in and testified requesting a variance of seven (7) feet from the thirty (30) feet front yard setback requirement for a proposed set of second floor stairs. Mr. Zorzi testified that the proposed variance will have a minimal impact; that the lot is an irregularly shaped lot; that the Property is located on a canal; that the previous dwelling was fifty (50) years old; that the proposed dwelling is within the character of the neighborhood and will mimic a neighboring house in size and shape; that the architect tried numerous designs to build the dwelling in compliance with the Sussex County Zoning Code; that the landing between the first and second floors is what will encroach; that due to the odd shape of the lot and the setback requirements the Property is unique; that the Property cannot otherwise be developed; that the variance will enable reasonable

use of the Property; that the difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood; that the variance will not be detrimental to the public welfare and will not impair the uses of neighboring properties; that the variance requested is the minimum variance to afford relief; that the soil scientist had a specific plan as to how the dwelling must be placed on the Property; that there is a bulkhead in the rear of the Property; and that the rear deck was designed to comply with the rear yard setback requirement.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11277 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The physical conditions of the Property and the building restriction lines create a unique situation;
2. The Property cannot otherwise be developed;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance will enhance the neighborhood; and
6. The variance sought is the minimum variance to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11278 – Robin Wright** – north of Road 22 (Long Neck Road) 3,800 feet east of Road 298 (Banks Road) and 2,300 feet west of Pot Nets Road (Road 22C). (Tax Map I.D. 2-34-24.00-40.00)

An application for a special use exception to operate a daycare facility.

This Application was withdrawn September 26, 2013.

**Case No. 11279 – Mackie Banks** – south of Ewing Road 500 feet east of Road 357 (Cedar Neck Road) and being Lot 12A of Bayside Hamlet Subdivision. (Tax Map I.D. 1-34-5.00-305.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case. Greg Hastings was sworn in and testified requesting a variance of 13.6 feet from the thirty (30) feet front yard setback requirement for a proposed attached garage, porch and steps. Mr. Hastings testified that he has been retained by the Applicant to design a renovation to the Applicant's existing home; that the curvature of Ewing Road creates the need for a variance; that the existing Nanticoke Home is on pilings; that a lagoon is located to the rear of the Property; that the area under the dwelling was enclosed to create more living space but does not meet Federal Emergency Management Agency ("FEMA") requirements and must be removed; that the Applicant's handicapped son lives with her and requires an elevator to access the existing dwelling; that the proposed elevator will be within the proposed attached garage; and that the garage will be used for a two (2) cars. Mr. Hastings submitted exhibits to the Board for review. Mr. Hastings testified that the structural elements of the existing house cannot be renovated to allow for an elevator to be placed within the internal design of the house; that the elevator needs to be outside the footprint of the existing house; that the Homeowners Association supports the Application; that approximately 1,200 square feet of living space will be removed; that the proposed additional living space will be 288 square feet; that the proposed attached garage is needed for wheelchair access during inclement weather and access to the proposed elevator; and that the Property cannot otherwise be developed due to the drastic curvature of Ewing Road.

The Board found that two (2) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11279 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The curvature of Ewing Road makes the Property unique;
2. The Applicant needs an accommodation for a disability;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood;
6. The variance is not detrimental to the public welfare; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11280 – Dante Lobato & Wendy Lobato** – northeast of Route 288 (Will King Road) and being southwest of Amberwood Way and 450 feet south of Aintree Road and being Lot 58 Block A within Chapel Green development. (Tax Map I.D. 2-34-6.00-287.00)

An application for a variance from the front yard setback requirement for a through lot.

Mr. Sharp advised the Board that his firm has represented the Applicants in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Mr. Lank presented the case. Dante Lobato and Jeff Clark were sworn in and testified requesting a variance of 22.3 feet from the forty (40) feet front yard setback requirement for an existing shed on a through lot.

Mr. Clark submitted exhibits to the Board for review. Mr. Clark testified that the Property is located in the Chapel Green Development; that the Applicants obtained a building permit for a shed earlier in this year; that the shed was constructed off site and delivered to the Property by the contractor; that the shed is closer than forty (40) feet from the property line; that the Applicants received a violation notice from the Planning and Zoning Inspector that the shed did not meet the required setback requirements; that the through lot creates a unique situation because it limits the placement opportunities for accessory buildings; that the Property has frontage on Amberwood Way and Route 288; that the Property is 10,000 square feet, which is the minimum size for a lot; that the existing dwelling is 32 feet from front yard property line on Amberwood Way side and 41 feet from the front yard property line on Route 288 side which only leaves an area measuring two (2) feet by one (1) foot area to place a shed in conformity with the Sussex County Zoning Code; that the Property faces the internal subdivision street; that these types of through lots are no longer allowed to be created in Sussex County; that the Property cannot be otherwise developed; that a similar shed is located on a neighboring property subject to a variance approval granted by the Board in 2003; that the difficulty was not created by the Applicants; that there have been similar variances granted in the development, therefore the variance will not alter the character of the neighborhood; that there are other sheds located in Chapel Green; and that the Homeowners Association supports the Application. Mr. Clark submitted a petition of support of the Application which has been signed by fourteen (14) individuals. Mr. Clark testified that the shed cannot be seen from the road due to an existing fence; that the shed will not create any site issues for traffic on the adjacent roadway; that the shed will not impair the uses of adjacent properties; that the variance is not detrimental to the public welfare; and that the variance is the minimum variance to afford relief.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11280 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is a through lot which creates a unique situation;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. A neighbor has a similar shed on its property; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11281 – Ali Kazemzadeh** – southwest corner Dune Road and Short Road within Middlesex Beach east of Route One. (Tax Map I.D. 1-34-17.16-52.00).

An application for a variance from the corner front yard setback requirement.

Mr. Lank presented the case. Mr. Lank stated that the Office of Planning & Zoning received one (1) email from a neighbor who opposed the Application and one (1) letter from the Middlesex Beach Homeowners Association which supported the Application.

Ali Kazemzadeh was sworn in and testified requesting a variance of five (5) feet from the fifteen (15) feet corner front yard setback requirement for a proposed dwelling; that the proposed dwelling will be forty (40) feet wide; that the Property is close to the water; that the first floor will not have much living space; that most of the living space is on the second and third floors; that the proposed size is needed to accommodate a proposed elevator for his elderly parents; that most of the dwellings in the development are set ten (10) feet from the property line; that the his lot is the only one in the community which would have a fifteen (15) feet setback; that the proposed location is in keeping with the character of the neighborhood; that the Property is currently vacant; that he would lose a substantial amount of square footage if the house had to comply with the setback requirements; that the house would not fit with the character of the neighborhood if it was built within the setbacks; and that a precedent has been set throughout the development. The Board offered the Applicant more time to prepare his case. Mr. Kazemzadeh stated that he would like more time to prepare.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be left open until the end of the public hearings. Motion carried 4 – 0.

At the conclusion of the public hearings, the Chairman re-opened the case. Mr. Kazemzadeh testified that the Property is unique because it must meet flood zone requirements and cannot have living space below the base flood elevation; that both parents are in wheelchairs and must have an elevator and wider hallways and doorway access throughout the proposed dwelling; that the Property could be developed within the building envelope but that the additional five (5) feet is necessary to accommodate his parents; that the proposed dwelling will enhance the value of the neighborhood; that his children ride bikes and the proposed hard surface will increase safety and access to the Property; and that a precedent has been set in this community.

Kathleen McClure was sworn in and testified in opposition to the Application and testified that her husband submitted the letter of opposition; that they built their home eleven (11) years ago; that they live two (2) lots behind the Applicant's lot; that they built their dwelling within the required setback requirements; that they also have an elevator and a handicapped mother living with them; that they have a handicapped home; that they have no first floor living space; that they built their house within the confines of the building setbacks; that they are concerned the variance request will prohibit the traffic from seeing oncoming traffic; and that her lot is 150 feet deep and the Applicant's lot is 120 feet deep.

Ali Kazemzadeh testified that the proposed dwelling will measure forty (40) feet by seventy (70) feet.

The Board found that no persons appeared in support of the Application.

The Board found that one (1) person appeared in opposition to the Application.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until November 4, 2013**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11282 – Quondara Dismuke**- northwest of Road 527 (Wilson Hill Road) 1,600 feet west of Road 529 (State Forest Road). (Tax Map I.D. 2-31-3.00-5.08)

An application for a special use exception to operate a daycare facility.

Mr. Lank presented the case. Quondara Dismuke was sworn in and testified requesting a special use exception to operate a daycare facility. Ms. Dismuke testified that she owns a ranch

style home on a three quarters ( $\frac{3}{4}$ ) acre lot; that a cornfield and vacant lot are located next to her property; that all of the daycare activities will be on her lot; that the neighbors are not close to her house; that she is a certified pre-school teacher; that she needs to expand her current daycare due to a waiting list; that her hours of operation are Monday through Friday from 7:00 a.m. to 5:00 p.m.; that the age of children range from two (2) years old to thirteen (13) years old; that she currently cares for five (5) children; that she is requesting to care for up to twelve (12) children; that there is adequate parking available; that she has no employees; and that the use will not substantially affect adversely the uses of neighboring and adjacent properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11282 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Hudson, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11283 – Dedee Hoehn** – 100 feet south of Hickman Road (Road 359) and east of Fresh Pond Drive and being 0.4 mile east of Cedar Neck Road (Road 357) and being Lot 1 in Bethany Preserve development. (Tax Map I.D. 1-34-9.00-1141.00)

An application for a variance from the rear yard setback requirement.

Mr. Lank presented the case. Dedee Hoehn was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet rear yard setback requirement for a proposed sun porch and deck. Ms. Hoehn testified that she has owned the Property for five (5) years; that the Property is adjacent to a water pumping station and a creek; that the vegetation surrounding the pumping station and creek create a unique situation; that the vegetation has continued to grow into her yard; that the proposed sun porch and deck will enable reasonable use of the Property; that her family is unable to enjoy the backyard due to the insects attracted to the vegetation; that her elderly father lives with them and the porch would allow him to enjoy the outdoors as well; that the difficulty was not created by the Applicant; that the Property is uniquely shaped; that the existence of the pumping station and the creek create a unique situation; that the variance is necessary to enable reasonable use of the Property; that the porch will not alter the essential character of the neighborhood; that the neighbors and the Homeowners Association support the Application; that neighbors will not see the sun porch; that neighbors have similar porches; and



that the variance sought is the minimum variance to afford relief. Ms. Hoehn submitted pictures for the Board to review.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11283 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property's shape is unique and the existing vegetation creates a unique situation on the Property;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance is necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson - yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11284 – Robert Christopher Clark** – south of Route 54 (Lighthouse Road) and north of Cedar Lane and across from River Birch Drive, being Lot 44 within Keen-wik Subdivision. (Tax Map I.D. 5-33-19.12-13.00)

An application for a variance from the side yard setback requirement.

Mr. Lank presented the case. Mr. Lank read into the record a letter from next door neighbor which evidenced his support of the Application. This letter was submitted to the Office of Planning & Zoning.

Christopher Clark was sworn in and testified requesting a variance of 4.8 feet from the ten (10) feet side yard setback requirement for a proposed attached garage. Mr. Clark testified that the Property is located within the Keen-wik development; that the existing dwelling does not have a garage or any storage area; that the current setback requirements would only allow for a space ten (10) feet wide which is not sufficient for a vehicle; that the proposed garage will allow enough room for a vehicle; that the garage cannot be attached to the rear of the dwelling and a detached garage would obstruct views; that the existing shed will be removed; that a neighbor

stores a boat on a concrete drive on the side of the requested variance; that the variance will not be detrimental to the public welfare; that the variance will not alter the essential character of the neighborhood; that the variance will enable reasonable use of the Property; that the Homeowners Association supports the Application; and that the variance requested is the minimum variance to afford relief.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11284 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot width and existing dwelling create a unique situation on the Property;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance is necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11285 – Barry Peterman & Wendy Peterman** – southeast of Road 625 (Clendaniel Road) 1,700 feet northeast of Road 42 (North Union Church Road). (Tax Map I.D. 2-30-12.00-69.00)

An application for a special use exception for a rifle / pistol range.

Mr. Lank presented the case. Barry Peterman was sworn in and testified requesting a special use exception for a rifle/pistol range; that he has lived on the Property for ten (10) years; that he has always had a private range on the Property for family and friends; that he is retired military and is a National Rifle Association (“NRA”) instructor; that he wants to begin holding classes on the range; that the Property is three (3) acres and backs up to a heavily wooded area; that he plans to only hold class one (1) day a week; that the classes will be held on a weekday between the hours of 2:00 p.m. to 5:00 p.m.; that he limited the day and time of the class due to concerns from a neighbor; that the Property abuts to a 1,000 acre parcel owned by Skip Jones; that an 800 acre parcel is also located nearby; that the area is not heavily populated; that he wants to be a good neighbor; that his neighbors are a hundred yards away; that there will be no classes

held on the weekends; that there would be no more than three (3) hours of shooting per week; that each class will have no more than ten (10) students; that each student has to shoot one hundred (100) rounds to become certified; that the classes will be for pistols only; that he owns three (3) one (1) acre parcels and he is only seeking the special use exception for Lot 3; that there is an existing twelve (12) foot high berm which is twenty-five (25) deep; that the use will not adversely affect the neighborhood; that all lands surrounding the Property is wooded; and that the property owned by Skip Jones is used for hunting purposes. Mr. Peterman submitted pictures and letters of support.

Tracy Dorman was sworn in and testified in opposition to the Application and testified that she lives one hundred (100) yards from the existing range; that she has lived in the area for three (3) years; that the sounds from the range are very disturbing; that she feels the range should have berms down the side to deflect ricocheting bullets; that hunters are not allowed to be within one hundred (100) yards from an occupied dwelling and feels the range should have the same restriction; and that her dwelling is three hundred (300) feet from the Applicants' property.

Robert Young was sworn in and testified in opposition to the Application and testified that he has lived in the area for over fifty (50) years; that he feels the range is too close to surrounding dwellings; that he feels the Applicants can use other existing ranges to hold his classes; and that he lives across the road from the Applicants and can hear the noise from the range.

Richard Jackson was sworn in and testified in opposition to the Application and testified that he lives with Tracy Dorman; that Marino Tactical Solutions has been conducting classes at the range since December; that there are thirteen (13) dwellings in the area; that the nearest dwelling is only sixty-two (62) yards from the range; that he is concerned for the safety of children that live in the area; that his child rides its bike in the neighborhood; that he has been in the military and understands the need for teaching gun safety; that he shoots a gun on his own property; that he has heard an automatic weapon shot at the range; that he suffers from massive migraines from being in the military and has to rest during the day; that the sounds of gunfire are very disturbing; that he is concerned about the distance a ricocheting bullet can travel; that he does not feel that the range is in a safe environment and that the range is not being operated in a safe manner; that the Applicants have held classes with up to ten (10) people who fire rapidly; and that the Applicants did not inquire with their neighbors about the use.

Benjamin Jones was sworn in and testified in opposition to the Application and testified that his family owns the 450 acre property to the rear of the Applicants' property; that 100 acres of his property is tillable and the rest is wooded; that he has had multiple incidents with Mr. Peterman; that the Applicants were using his family's property for a portion of the range without permission; that the berm was hidden from the road and was actually on his family's property by approximately forty (40) to fifty (50) yards; that the range has since been moved off of the Jones

property; that the Applicants had removed trees from his family's property without permission; and that he hears gunshots on the Property when he is on his farm.

Mike Campbell was sworn in and testified in opposition to the Application and testified that he has lived in the area for thirty-five (35) years and lives one-hundred (100) yards from the range; that a residential area is no place for a shooting range; that the sound from the range is extreme; that the range has been used for over a year multiple times a week; that three (3) hours of constant shooting is very disruptive to the peaceful character of the neighborhood; that he expects to hear hunters during hunting season; and that he was not consulted prior to the installation of the range.

Robert Young was sworn in and testified in opposition to the Application and testified that he lives across the road from the Property; that his property is approximately one-eighth (1/8) of a mile from the Property; that the noise from the range is very disturbing; and that the shooting goes on four (4) or five (5) days a week.

In rebuttal, Barry Peterman, testified that he had been using the range until he received a cease and desist order from the Sussex County Planning & Zoning Department; that only pistol training will be held at the range; that the opposition has told exaggerations and lies; that he had permission to use the Jones property from the prior owners; that once he did not have the current owners' permission he removed the berm immediately; that he was unaware of the negative sentiment until the hearing; that he would be willing to erect dirt side berms to help with ricocheting bullets and sound from the range; that there will be no rifle or shotgun training on site; that he and his family have fired their personal rifles and shotguns on the Property; that he has had the range for ten (10) years and his family uses it on a regular basis; that all brass casings are picked up on the Property after being shot; that no debris has gone onto neighboring properties; and that the range faces away from the road and shots are directed to the rear of the Property.

Robert Young testified that there is new construction in the area which will add five (5) new residences to the area.

Jessica Young was sworn in and testified in opposition to the Application and testified that she grew up on the farm across the road; that the range is very loud and disturbing; that she is mainly against the noise from the range and wants action taken to make it quiet; that she is familiar with shooting and believes that there are ways to lessen the impact of the noise from the range.

The Board found that no parties appeared in support of the Application.

The Board found that thirteen (13) parties appeared in opposition to the Application.

Mr. Lank read a letter of support into the record.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until November 4, 2013**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

### **OLD BUSINESS**

**Case No. 11267 – Fahmi Smadi** – northwest of Road 224 (Fleatown Road) 150 feet southwest of Road 214 (Cabbage Pond Road) and east of Cabbage Way, a Subdivision Street. (Tax Map I.D. 2-30-13.00-166.02)

An application for a special use exception to retain a manufactured home type structure for storage and security for a period of five (5) years.

Mr. Lank provided two (2) photographs of the proposed manufactured home which was submitted to the Office of Planning & Zoning by the Applicant for consideration and as requested.

The Board discussed the case which has been tabled since October 7, 2013.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11267 for the requested special use exception for a period of five (5) years and with the stipulations that the approval is only for the Applicant's use and the microbial growth be removed from the siding and skirting of the manufactured home based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of five (5) years with the stipulations and reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11260 – Charles R. Tollinche** – southwest of Road 273 (Country Club Road) being south of White Oak Road, 225 feet southwest of West Side Drive, and being Lot 41 Block 19 within Rehoboth Beach Yacht and Country Club development. (Tax Map I.D. 3-34-19.00-72.00)

An application for a variance from the side yard setback requirement.

Mr. Lank read the affidavit submitted to the Office of Planning & Zoning by the Applicant and as requested.

The Board discussed the case which has been tabled since October 7, 2013.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11260 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The odd shaped lot makes it unique;
2. The Property is located on a cul-de-sac;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Meeting Adjourned 9:50 p.m.**